

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 110001-U

Filed 10/28/11

NO. 4-11-0001

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MICHAEL J. EHRHARDT,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
JESSE WHITE, Secretary of State of the State of)	No. 10MR256
Illinois,)	
Defendant-Appellee.)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff declined to participate in a telephone hearing and wanted the motion to dismiss decided on the pleadings, the trial court did not commit any procedural errors by (1) discussing how the case would proceed with just defendant's attorney on the date of the hearing, (2) allowing defendant to file a rebuttal pleading, and (3) deciding the motion on the pleadings and the documents attached to them.

¶ 2 In April 2010, plaintiff, Michael J. Ehrhardt, filed a *pro se* complaint against defendant, Jesse White, as Secretary of State of the State of Illinois (Secretary), seeking, *inter alia*, the full reinstatement of his driving privileges. In June 2010, the Secretary filed a motion to dismiss plaintiff's complaint, asserting plaintiff failed to file his complaint within the 35-day period required by section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2010)). On September 28, 2010, the Sangamon County circuit court granted the Secretary's motion to dismiss.

¶ 3 Plaintiff appeals *pro se*, asserting (1) the circuit court made several procedural errors in deciding the motion to dismiss that indicate the court conspired with the Secretary's attorney, and (2) the Secretary erred by refusing to rescind an order of revocation against his Illinois driver's license. We affirm.

¶ 4 I. BACKGROUND

¶ 5 During the events and pendency of this case, plaintiff has been incarcerated in the Illinois Department of Corrections. In a July 1, 2009, letter to the Secretary, plaintiff inquired about the status of his Illinois driver's license and about any steps necessary to have his Illinois driving privileges reinstated. In September 2009, plaintiff sent a follow-up letter. In a September 22, 2009, letter, the Secretary's office informed plaintiff his driving privileges were revoked and he would need to contact the administrative hearings department to apply for a restricted driving permit or reinstatement of full driving privileges. Attached to the letter was a leaflet with instructions about obtaining a restricted driving permit or reinstatement.

¶ 6 In October 2009, plaintiff sent the Secretary's office a completed formal-hearing-request form, a two-page affidavit by plaintiff, and a check for the \$50 filing fee from his prison trust fund. On January 28, 2010, the Secretary's office mailed plaintiff a letter that stated the Secretary was returning plaintiff's check "because it serves no purpose at this time." The letter further provided a telephone number if plaintiff needed more information. In March 2010, plaintiff again mailed the Secretary's office the form and a \$50 check. In his letter to the Secretary's office, plaintiff stated he had already been charged the \$50 fee because 90 days had passed since the check was issued and he could not get cash for it. On March 31, 2010, the Secretary's office mailed plaintiff a letter and again returned the \$50 check. The letter noted

plaintiff would have to attend an in-person consultation or hearing, which could not be accomplished until plaintiff's release from prison.

¶ 7 On April 28, 2010, plaintiff filed his *pro se* complaint in the Sangamon County circuit court against the Secretary, seeking full reinstatement of his driving privileges and not less than \$250,000 in damages for breach of contract, breach of fiduciary duty, and unjust enrichment by fraud. In the complaint, plaintiff stated the Sangamon County circuit court had jurisdiction to review this matter under section 2-118(e) of the Illinois Vehicle Code (625 ILCS 5/2-118(e) (West 2010)), which provides for review under the Administrative Review Law (735 ILCS 5/art. 3 (West 2010)). The circuit court clerk issued the summons on May 5, 2010, and the Secretary was served on May 7, 2010.

¶ 8 On June 7, 2010, the Secretary filed a motion to dismiss plaintiff's complaint under section 2-619(a)(1) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1) (West 2010)), asserting the circuit court lacked subject matter jurisdiction because plaintiff failed to file his complaint within 35 days of the Secretary's January 28, 2010, decision as required by section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2010)). On June 28, 2010, plaintiff filed a reply to the motion to dismiss, asserting (1) the Secretary's motion was untimely; (2) the motion was not supported by an affidavit; and (3) the 35-day period should be based on the Secretary's March 31, 2010, letter. On July 1, 2010, the Secretary filed a notice of a telephone hearing on August 18, 2010, for his motion to dismiss. On July 12, 2010, plaintiff filed a reply to the notice, (1) indicating he was going to stand on his reply and not participate in the telephone conference and (2) requesting the circuit court to decide the motion on the pleadings.

¶ 9 The August 18, 2010, docket entry states the Secretary's attorney advised the circuit court of plaintiff's desire to have the court decide the motion on the pleadings and forgo oral argument. The court granted the Secretary seven days to file a reply to plaintiff's response and noted it would rule on the motion to dismiss in 30 days. On August 25, 2010, the Secretary filed his reply to plaintiff's response. On September 7, 2010, plaintiff filed a motion for leave to respond. On September 28, 2010, the court filed its order, granting the Secretary's motion to dismiss. The court noted it had considered the Secretary's section 2-619 motion to dismiss, plaintiff's reply, and defendant's reply to plaintiff's reply. Moreover, the court found the Secretary had entered and served upon plaintiff a final administrative decision on January 28, 2010.

¶ 10 While plaintiff's notice of appeal in the record is file-stamped December 29, 2010, both a docket entry and a letter to the circuit clerk indicate plaintiff filed his notice of appeal on October 18, 2010. The docket sheets indicate plaintiff was mailed a copy of his notice of appeal and docket sheets on December 29, 2010. Accordingly, plaintiff's notice of appeal was timely filed on October 18, 2010, under Illinois Supreme Court Rule 303(a)(1) (eff. May 30, 2008). The notice of appeal also sufficiently complies with the form requirements of Illinois Supreme Court Rule 303(b) (eff. May 30, 2008). Moreover, no motions are currently pending as the circuit court's September 28, 2010, order implicitly denied plaintiff's leave to respond as it expressly stated the court only considered the dismissal motion, plaintiff's reply, and the Secretary's reply to plaintiff's reply. See *7-Eleven, Inc. v. Dar*, 363 Ill. App. 3d 41, 46, 842 N.E.2d 260, 265 (2005) (noting the circuit court's denial of the respondent's motion for summary judgment was an implicit denial of his request to confirm the award). Thus, we have jurisdiction

of this case under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 11

II. ANALYSIS

¶ 12

A. The Secretary's Brief

¶ 13 Initially, we address the matter raised in plaintiff's reply brief. Plaintiff's requests that we strike the Secretary's brief as untimely since the brief was due on September 14, 2011, and that was the date the Secretary's attorney mailed the brief according to the notice of filing. Citing "M-W's Dictionary of Law," plaintiff contends a document is considered filed when the office to which it is directed receives the document. However, Illinois Supreme Court Rule 373 (eff. Dec. 29, 2009) addresses the date of filing papers in a court of review and provides, in pertinent part, the following:

"Unless received after the due date, the time of filing records, briefs or other papers required to be filed within a specified time will be the date on which they are actually received by the clerk of the reviewing court. If received after the due date, the time of mailing, or the time of delivery to a third-party commercial carrier for delivery to the clerk within three business days, shall be deemed the time of filing. Proof of mailing or delivery to a third-party commercial carrier shall be as provided in Rule 12(b)(3). ***"

¶ 14

Thus, since this court likely received the brief after its due date, the date of mailing would be the date of filing as long as the proof of mailing complied with Illinois Supreme Court Rule 12(b)(3) (eff. Dec. 29, 2009). See *Secura Insurance Co. v. Illinois Farmers*

Insurance Co., 232 Ill. 2d 209, 216, 902 N.E.2d 662, 666 (2009). Plaintiff has not challenged the proof of mailing, and thus we find the Secretary's brief was timely filed since it was mailed on September 14, 2011. Accordingly, we deny plaintiff's request to strike the Secretary's brief.

¶ 15 B. Circuit Court's Procedures in Granting the Secretary's Motion To Dismiss

¶ 16 Plaintiff appears to take issue with several of the procedures utilized by the circuit court in deciding the Secretary's section 2-619 motion to dismiss. Generally, with administrative-review cases, we review the administrative agency's decision, not the circuit court's. *Williams v. Board of Trustees of Morton Grove Firefighters' Pension Fund*, 398 Ill. App. 3d 680, 687, 924 N.E.2d 38, 45 (2010). However, when the circuit court has granted a section 2-619 motion to dismiss an administrative-review action, this court reviews *de novo* the circuit court's dismissal order. See *Coleman v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago*, 392 Ill. App. 3d 380, 385, 911 N.E.2d 493, 498 (2009); *Catamount Cargo Services, LLC v. Illinois Department of Employment Security*, 366 Ill. App. 3d 1039, 1041, 853 N.E.2d 85, 87 (2006).

¶ 17 Plaintiff first challenges the circuit court's granting the Secretary seven days to file a reply to plaintiff's reply during the August 18, 2010, telephone hearing. Plaintiff contends the hearing was an *ex parte* proceeding and the court should not have participated in it. However, the Secretary gave notice of the August 18, 2010, hearing, which plaintiff did receive since he filed a response to the notice on July 12, 2010. In his response, plaintiff stated he was going to stand on his reply, not participate in the telephone hearing, and wanted the motion decided on the pleadings. Thus, plaintiff himself is the reason why the court discussed the motion to dismiss without him at the August 18, 2010, telephone hearing. We find the court did not act improperly

by discussing with the Secretary's attorney outside plaintiff's presence plaintiff's response to the notice of hearing and how to proceed with the case.

¶ 18 As to the court granting the Secretary seven days to respond to plaintiff's reply to the motion to dismiss, plaintiff received notice of that and did not raise an objection. A party's failure to object in the trial court constitutes a forfeiture of the issue on appeal. See *Regency Savings Bank v. Chavis*, 333 Ill. App. 3d 865, 870, 776 N.E.2d 876, 880 (2002). Accordingly, plaintiff has forfeited this argument, and we decline to address it.

¶ 19 Plaintiff also argues he did not receive notice of the circuit court's hearing on the dismissal motion held on September 28, 2010, and thus the order is void. However, the record indicates the court did not hold a hearing on that date. The court entered its order after considering the parties' pleadings, which was done at plaintiff's request. Accordingly, we find the court's September 28, 2010, order is not void.

¶ 20 Last, plaintiff contends the Secretary never produced evidence that, on January 28, 2010, he entered and served upon plaintiff a final administrative decision denying his request for a formal hearing to apply for full reinstatement of his driving privileges. Thus, the Secretary, the Secretary's attorney, and the circuit court were in a civil conspiracy since the court found the Secretary did enter a final decision on January 28, 2010. However, plaintiff overlooks the fact he attached the January 28, 2010, decision to his complaint (page 12 of the complaint's appendix). Thus, the court had material before it from which it could find the Secretary did enter a final administrative order on January 28, 2010. The record contains no evidence of a conspiracy between the court, the Secretary, and the Secretary's counsel. Thus, we again find no error.

¶ 21 Accordingly, we conclude plaintiff has not shown any procedural errors in the

circuit court's handling of the Secretary's motion to dismiss. We note plaintiff does not challenge the circuit court's finding his complaint was untimely filed. Thus, we do not address whether plaintiff's complaint was in fact untimely.

¶ 22 C. Secretary's Denial of his Hearing Request

¶ 23 Plaintiff also challenges the Secretary's denial of his hearing request, which addresses the merits of plaintiff's complaint. Since we have found the circuit court properly dismissed plaintiff's complaint, we do not address this issue.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the Sangamon County circuit court's dismissal of plaintiff's complaint.

¶ 26 Affirmed.